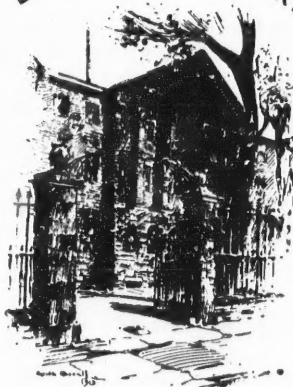


NOVA SCOTIA
LEGISLATIVE LIBRARY



PROVINCE HOUSE

1983
Box 116

CROSSKILL

vs.

The Morning Herald Printing and Publishing
Company.

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SUMMONS AND DECLARATION.

HALIFAX, SS.

VICTORIA, *by the grace of GOD, of the United Kingdom of Great Britain and Ireland,*
[LS.] QUEEN, *Defender of her Faith, &c., &c.*

To the Sheriff of the County of Halifax, or to any other of our Sheriffs.

We command you to summon the "Morning Herald Printing and Publishing Company" of Halifax, hereinafter called the defendant, to appear in the Supreme Court at Halifax, within ten days after the service of this writ, at the suit of Herbert Crosskill, hereinafter called the plaintiff, who says for that the defendant falsely and maliciously printed and published of the plaintiff in relation to a certain office held by him as Deputy Provincial Secretary of the Province of Nova Scotia, in a certain newspaper of the defendant company, called the Morning Herald, and printed and published by them in the City of Halifax, and dated Wednesday, the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and which said article appeared in the editorial column of said Morning Herald newspaper, under the caption "Concerning Martyrs," and is as follows:—"Our morning contemporary has at last created a veritable Grit Martyr in the person of Mr. Herbert Crosskill (meaning the plaintiff.) It first tells the awful story of his (the plaintiff's) martyrdom, and then decks him (meaning the plaintiff) with the white robe and the crown, and lastly turns upon his persecutors, and with its prophetic soul inspired with divine afflatus, and its eye enlightened by a vision of the future, predicts the most terrible woe and desolation in store for Hon. Mr. Holmes and his unfortunate colleagues. We are sorry that our duty as journalists compels us to dissipate such a really fine effort of genius, and to completely destroy Mr. Herbert Crosskill's chances of a martyr's crown. But the truth must be told, even if better things than Mr. Crosskill fall, and the truth in this case is very damaging both to our contemporary and its hero. Mr. Crosskill was appointed in 1867, when his party came in power. He possessed not one solitary qualification for the office, further than that he was a renegade from our party, and, like all renegades, was unusually bitter, violent and unscrupulous. His selection caused no little surprise at the time, but ceased to be so when it became known what manner of men he was required to serve, and the kind of services that Messrs. Annand and Vail required of him. For eleven years the Provincial Secretary's Office has been a sink of iniquity, where public robbery ran riot, and where political villainy of almost every species was concocted and perpetrated. In all this Mr. Crosskill was a willing and active participator. The Messrs. Annand may perhaps be excused for bemoaning him, for he was a man of their own heart, both in his public and private life, and many a time has he no doubt served their purposes. Out of his office Mr. Crosskill was a loud-mouthed and violent partizan, ridiculing Hon. Mr. Holmes and his colleagues in the coarsest Billingsgate. To suppose that such a man (meaning the plaintiff) could be retained by any body of gentlemen in a confidential position is really astounding.

"The government might as well think of having the editor of our contemporary himself as their confidential clerk as have such a man in the office of Deputy Provincial Secretary. The pretence that the late government never dismissed men for political reasons is utterly untrue. What were Messrs. Kinnear and Purdy of Amherst, dismissed for, but simply that they refused to vote for Mr. Annand? Why was Mr. Rowley, of Yarmouth, dismissed? Why were Messrs. George and Parsons dismissed? and why were scores of other able and honest officials all over the province dismissed, but simply for their politics? The Mackenzie Government did the same thing. Take the case of Mr. Charles Almon for instance, who, after having held the office of Surveyor of Shipping for this port for six years, was dismissed without cause a few weeks after the change of government in 1874. There was no talk about "Americanizing" our institutions then. In all of these cases the officers dismissed were honest and faithful; elements that are certainly lacking in the case of Mr. Herbert Crosskill. If that person's name is to be placed on the roll of martyrs, it must be in the same list with that of the chief baker whom Pharaoh hung." The said defendant meaning thereby that the plaintiff was guilty of public robbery and almost every species of villainy, and in all of which the plaintiff was a willing and active participant.

Also, that the defendant falsely and maliciously printed and published in their said paper, called the Morning Herald, mentioned in foregoing count of the plaintiff, in relation to a certain office held by him as Deputy Provincial Secretary of the Province of Nova Scotia, which he then held, in said newspaper of the defendant company, and printed and published by them in the City of Halifax, and dated Wednesday, the twentieth day of November, in the year of our Lord one thousand eight hundred and seventy-eight, and which said article appeared in the editorial column of said Morning Herald newspaper under the caption "Concerning Martyrs," and is as follows:—"Our morning contemporary has at last created a veritable Grit martyr, in the person of Mr. Herbert Crosskill (meaning the plaintiff). It first tells the awful story of his (the plaintiff's) martyrdom, and then decks him (meaning the plaintiff) with the white robe and the crown, and lastly turns upon his persecutors, and with its prophetic soul inspired with divine afflatus and its eye enlightened by a vision of the future, predicts the most terrible woe and desolation in store for Hon. Mr. Holmes and his unfortunate colleagues. We are sorry that our duty as journalists compels us to dissipate such a really fine effort of genius, and to completely destroy Mr. Herbert Crosskill's chances of a martyr's crown. But the truth must be told, even if better things than Mr. Crosskill fall, and the truth in this case is very damaging both to our contemporary and its hero. Mr. Crosskill was appointed in 1867, when his party came in power. He possessed not one solitary qualification for the office further than that he was a renegade from our party, and, like all renegades, was unusually bitter, violent and unscrupulous. His selection caused no little surprise at the time, but ceased to be so when it became known what manner of men he was required to serve and the kind of services that Messrs. Annand and Vail required of him. For eleven years the Provincial Secretary's office has been a sink of iniquity, where public robbery ran riot and where political villainy of almost every species was concocted and perpetrated. In all this Mr. Crosskill was a willing and active participant. The Messrs. Annand may perhaps be excused for bemoaning him, for he was a man of their own heart, both in his public and private life, and many a time has he, no doubt, served their purposes. Out of his office Mr. Crosskill was a loud-mouthed and violent partizan, ridiculing Hon. Mr. Holmes and his colleagues in the coarsest Billingsgate. To suppose that such a man (meaning the plaintiff) could be retained by any body of gentlemen in a confidential

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 "Provincial Secretary. The pretence that the late Government never dismissed men for political
 "reasons is utterly untrue. What were Messrs. Kinnear and Purdy, of Amherst, dismissed for
 "but simply that they refused to vote for Mr. Annand? Why was Mr. Rowley, of Yarmouth,
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 "able and honest officials all over the Province dismissed, but simply for their politics? The
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 "who, after having held the office of Surveyor of Shipping for this port for six years, was dismissed
 "without cause a few weeks after the change of Government in 1874. There was no talk
 "about Americanizing our institutions then. In all of these cases the officers dismissed were
 "honest and faithful, elements that are certainly lacking in the case of Mr. Herbert Crosskill.
 "If that person's name is to be placed on the roll of martyrs, it must be in the same
 "list with that of the chief baker whom Pharoah hung," meaning thereby that the plaintiff was
 "guilty of felony, and was a public robber.

Also that the said defendant falsely and maliciously printed and published of the plaintiff,
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 "Parsons dismissed? and why were scores of other able and honest officials all over the Province
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 "the case of Mr. Charles Almon, for instance, who after having held office of Surveyor of Shipping
 "for this port for six years, was dismissed without cause a few weeks after the change of govern-
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 "cases the officers dismissed were honest and faithful, elements that are certainly lacking in the
 "case of Mr. Herbert Crosskill. If that person's name is to be placed on the roll of martyrs, it
 "must be in the same list with that of the chief baker whom Pharaoh hung," meaning thereby that
 the plaintiff, as such Deputy Provincial Secretary was a public robber, and was dishonest, be-
 sides being guilty of every species of villainy, and actively participating therein.

180

And he claims ten thousand dollars damages.

Issued this 27th day of March, A. D. 1879.

(Sgd.)

M. I. WILKINS, *Proth'y.*

ROBERT MOTTON, *Attorney of Plaintiff.*

APPEARANCE AND PLEAS.

HALIFAX, SS. IN THE SUPREME COURT, 1879.

190

HERBERT CROSSKILL, *Plaintiff.*

vs.

THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendants.*

I appear for the above named defendant.

ROBT SEDGEWICK,
Defendant's Attorney.

HALIFAX, SS. IN THE SUPREME COURT, 1879.

HERBERT CROSSKILL, *Plaintiff.*

vs.

THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendant.*

1. The defendants, by Robert Sedgwick, their attorney, first suggesting that the several
 counts of the plaintiff's declaration are substantially for the same cause of action, for a first plea
 to the plaintiff's declaration say, that they did not print or publish the said alleged defamatory
 matter.

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2. And for a second plea to the said declaration, the defendants say that they did not falsely or maliciously print or publish the said alleged defamatory matter.

3. And for a third plea to the said declaration, the defendants say that shortly before the publication of the said alleged defamatory matter, and for several years previous thereto, the plaintiff had been Deputy Provincial Secretary for the Province of Nova Scotia, and, upon being dismissed from such office by the Government of Nova Scotia, had publicly charged such Government with malfeasance and injustice by reason thereof, and had caused a newspaper in the City of Halifax to hold him (the plaintiff) up as a public martyr, and the defendants, in answer to such charges and complaint, wrote and published the words in the said declaration complained of as part of an article in the Morning Herald newspaper, and such words were a fair and *bona fide* comment on the conduct of the plaintiff in such public capacity as aforesaid, and were published without any malice on the part of the defendant. 210

ROBT SEDGEWICK, *Defendant's Attorney.*

MINUTES OF TRIAL.

SUPREME COURT, HALIFAX,
APRIL 29th, 1880.

Crosskill vs. Morning Herald.

220

MR. WEEKS opens.

JOHN J. STEWART sworn.

MR. WEEKS asks: Are you connected with the Morning Herald Printing and Publishing Company? [Witness declines to answer the question, as it may tend to criminate him, as a libel case is pending.] This paper is the Morning Herald. I decline to say by whom it is published for the same reason. [Paper marked "H. McD." 1.] It purports to be the Morning Herald, and I dare say it is.

Q.—Have you any doubt that it is the Morning Herald? A.—I decline to answer. [Mr. Rigby objects.] I can't say whether it is a *bona fide* copy or not; I am not a printer.

Q.—Are you the editor of a paper called the Morning Herald newspaper? A.—I decline to answer; I decline to say what I have been doing for the last year. I have been a journalist for the last year, editing a paper. I decline to say what paper. I was subpoenaed in this case on the street. I decline to say who the members of the Herald Company are, as I could only know it by being a member myself, and it would be an admission that I am a member and might criminate me. I decline to say in what office I was journalist. I know the foreman in the Herald Printing and Publishing office; his name is Thomas Brophy; one McLean is a compositor there; John McDonald is pressman there; it is in 56 Granville Street the Herald is 230

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reported to be published. John Cahill has the business department in charge there at that office; he sends out accounts and collects moneys; I do not know who for, except by hearsay. [Objected to.] I receive a salary as a journalist. Cahill said me. [Objected to.] The building in which the Morning Herald newspaper is published is 56 Granville Street, I think. I decline to say that I am a defendant or not in this case, as if I admit it I may be indicted for libel. Cahill performs duties in an office in the building referred to. Morning Herald has been published in that building about five years. The Act of Incorporation was passed in 1875. This is it. It is to provide for the incorporation of the company. I decline to say that that is the company whose office is in the building referred to, because as I could only know it by being a member of the company, and liable to indictment. I have been in the building nearly every day for the last year. I decline to say if it is that building I perform my duty as a journalist. I have written in it. In the garret, in one room, in which I almost always did my writing, every day I was in the city. I decline to say what kind of writing. The writing was partly journalistic. I must have had access to a bound volume of that paper for 1878; not for the last six months. Some of them are in one place and some in another. I have no doubt I referred to these volumes. I saw in print some manuscript that I had written; some of them in the Morning Herald newspaper, in 1878, about September. Is shown an article in newspaper ("H. McD. 1.") and say I decline to say whether this is one of them, as it is alleged to be libellous, and I might be indicted. Some of my writings were at the solicitation of Mr. Griffin, who was reported to have occupied the position of Editor of the Morning Herald. I decline to say who took Griffin's place. He wrote in the same room that I write now. I decline to say in whose employ I now am. I saw my writing in the Morning Herald newspaper. Nearly all the political papers I wrote for the last year or so was published in that paper.

Q.—Who employed you to write these articles? A.—I decline to answer. I saw Dr. Almon in the office; also Dr. Parker, Francis G. Parker, John S. D. Thompson and Mr. Sedgwick. I saw him write in that office. My attention was called to an article in the Morning Herald of the 20th November, 1878, headed "Concerning Martyrs." I suppose I saw it in a copy of the Morning Herald the day after it was published, or in what purported to be the Herald. I have no doubt this article in this paper ("H. McD. 1.") is word for word the same as I read in the paper referred to. I am familiar with the Herald as a reader of it, sometimes as proof-reader. Am as familiar as a reader would be with the make-up of type and general appearance of the Herald. This ("H. McD. 1") looks to me as a copy of the Morning Herald (in the newspaper sense) of the one I read on the morning the article was published, 20th November, 1878. It appears to me an exact copy. I decline to say who read the proof of the article complained of; I might criminate myself. For the same reason, I decline to say whether I saw the manuscript of that piece. I never was present at a meeting of the members of the company, except as a member. I cannot therefore answer the question who the directors are. I have not the means of knowledge, otherwise than as a member, who the officers are. I decline to say who the secretary is, as it may criminate me. I am not the secretary, nor a director. I decline to say whether I was director at the time of libel. I cannot say whether Mr. Sedgwick was a director, as I could only know it by being a member, and so criminate myself. The article complained of is printed in bourgeois type.

[Mr. Stewart stands aside.]

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FRANCIS G. PARKER sworn.

Q.—Are you a member of the defendant company? A.—I decline to answer, as I am advised and believe it would subject me to a criminal prosecution. I received a letter from the firm of Motton, McSweeney and Fielding relative to the subject matter of this suit. I do not deny that I am a member of the defendant company or admit that I am.

I ask the witness to answer. [Objected to by Mr. Sedgwick.] I was a member of the defendant company in 1878, and was from its first establishment, about six years ago, down to the present time, as the Morning Herald Printing and Publishing Company. Its place of business is on Granville Street. I saw Mr. Stewart write there in that building. It is carried on in the building in which he writes. The Morning Herald newspaper is published in that building, and has been for a number of years; about three years. It has been issued continuously from that office. I don't know the circulation of the paper. [Mr. Sedgwick admits the circulation of the Herald to be 8,000.] I got the Herald generally at my house. I think I know it when I see it; am familiar with the appearance of it. [Looks at paper "H. McD. 1."] I can't say whether this is the Morning Herald, published in that office I referred to; I believe I read this article "Concerning Martyrs" in the Morning Herald. I believe this to be the same article. I am a subscriber to the paper. I don't know where this paper is published. The Morning Herald is, I believe, published in Granville Street. I don't recollect seeing it published. Saw the Mail struck off. J. J. Stewart is the editor of that paper. I don't think he was in 1878. I don't know who wrote this article. I don't recollect speaking to the editor of the Herald about this article, complaining of it. I can't say what time. I was in the office after the article came out. Stewart may have been editor in the latter part of 1878. I do not know that he was then writing for the Herald. I do not recollect that I ever spoke to Mr. Stewart and told him that he had gone too far in that article. I know George Wiswell, the carpenter. He is a School Commissioner. I met him a few days ago. I have no recollection of mentioning Stewart's name to Wiswell on that occasion. I do not think I told him that I told Stewart he went too far in writing that article. I have advertised in the Morning Herald. On the twentieth of November, 1878, Dr. Almon, Mr. Sedgwick, Mr. Frederick Allison and several of the names in the Act were shareholders. Godfrey P. Payzant and George Wiggins were also. I can't say positively, as changes have been made. I was also. Charles H. M. Black also was a member; S. L. Shannon was and is a member; Dr. Fraser was; George W. Churchill was also. I think McFarlane was not. I think Mr. Bulmer is a member, and was then; J. S. McDonald was a member, and is banker of the company. I think Frederick Allison was the Managing Director in 1878. I don't know who was Secretary. The company was incorporated to publish papers, like this. I know no other Morning Herald published in Halifax. It is and was a daily paper. The directors are elected annually. I don't think I was director in 1878. This ("H. McD. 1.") looks like the Herald. [Objected to.] This paper may have been published in another printing office for all that I know. I don't know what office it was issued in. I don't see anything on this paper to lead me to doubt that this is a genuine paper issued out of the office of the Morning Herald. I have not any doubt from its appearance that it is a genuine copy of the Morning Herald.

Cross-examined by Mr. Sedgwick. I am not a printer; I don't know more of the type of the Herald than of any other newspaper. I could speak as positively of where the Chronicle comes from as the Herald. What I said respecting this paper is not from any knowledge I acquired as a member of the company. I see "Herald" written on this paper. If the heading was

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"The Morning Chronicle" in this paper, I would believe it to have been issued in the Morning Chronicle office. My knowledge is derived from what is printed in the paper itself. I saw Herald sold in the Morning Herald office; never saw bundles going out. I do not know of my own knowledge whether the company is incorporated or not. I never saw T. E. King nor S. L. Shannon, nor G. P. Payzant, nor Dr. Fraser at any meeting of the Company; did see Wiggins; did not see Churchill nor McFarlane, nor Reid, Gordon nor Archibald. I never saw these gentlemen, except the two named, acting in connection with the company.

330

ROBERT SEDGWICK sworn. I was one of the promoters of the Herald Printing and Publishing Company. [Mr. Harrington desires to note that he takes the same objections to the evidence of Mr. Sedgwick as to that of Mr. Parker]. I did not write the article in question, and have no recollection of reading it till published. I read the Herald every morning. I have often been in the office of the Morning Herald, in 56 Granville street, and have been in the printing room. I know John C. Cahill. I do not know of my own knowledge what his position is; he attends business in the counting-room, the financial part of the business, so far as I know. I think I saw Cahill yesterday; not to-day. I had no conversation with anybody in relation to Cahill. I have been a contributor to the Morning Herald. Outside of the fact that this paper is called the Morning Herald on its face, I would not know it. I presume this is a copy of the Morning Herald, because I do not assume that it is a forgery; I see nothing to induce me to doubt that it is a genuine paper. I have no doubt that this paper is what it purports to be ("H. McD. 1"); is the paper referred to. I am a member of the company; I corrected proofs of the Morning Herald. I have no recollection of reading the article in question at the time of publication. I have no doubt I read it that morning, probably in a paper coming to my house. I am a subscriber to the Herald, and receive it daily. I have no doubt I read it in the paper so received.

340

Cross-examined by Mr. Harrington.—I do not know any difference between the type used by this paper and the Morning Chronicle; there may be a difference. If this paper was headed "The Morning Chronicle," I would not doubt it would be that paper, unless I read it. I cannot judge of the genuineness of this paper better on account of being a member of the corporation. I cannot say where this paper was issued. [Notice to produce admitted by Mr. Sedgwick to have been served. ("H. McD. 2, read.") Mr. Sedgwick refuses to produce file of papers and bound volumes of paper, &c.]

350

MR. SEDGWICK re-called for plaintiff.

Q.—What reason do you give for not producing the papers? A.—I refuse to answer as professional adviser of defendant. I made no application for the file; I don't know where they are kept. [Mr. Sedgwick reads the article in question in paper ("H. McD. 1.") I have no doubt I read this same article in the paper left at my house; the Morning Herald left at my house. I do not know that it came from the Morning Herald office. I received the Morning Herald newspaper at my house every day. I have no doubt I read this same article in that paper.

360

Cross-examined by Mr. Harrington. I don't know of my own knowledge from what office the paper I received was sent to me. I cannot say that the whole of what I read to-day appeared in the paper I formerly read; some might have been omitted. I never saw the Morning Herald sent from any office.

T. P. CONNOLLY sworn. I sell the Morning Herald newspaper, since its publication; I never missed selling it except on holidays. It is published in a building on Granville street, on the

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western side, south of the Y. M. C. Association building. They send them from the office by an employe of the office. I settle with accredited messengers from the office weekly, returning back unsold papers. This ("H. McD. 1.") is the Morning Herald; it is a copy of the Morning Herald. I sold copies of this paper November 20th, 1878, I have no doubt. I have no doubt I read this article headed—headed—"Concerning Martyrs." Had a conversation with plaintiff about it in my office on that day, I think. I remember looking at the article in my store on that day, when Crosskill was in; Marshall was in then, James Marshall. I know Marshall's signature; this is his own paper, "H. McD. 1." I cannot say that the rest of the writing is in his writing. Crosskill told him to go to the Herald office to buy a paper (objected to); to get a paper of that date, I presume; yes, Crosskill said that he intended to sue the Company. (Objected to). Marshall then went out and returned with a copy of the paper; this must be it; I saw him sign it. Marshall died the first of the present year, after a week's illness; his death was very unexpectedly. The paper which I had on that day contained the article in this paper headed "Concerning Martyrs." I was in the Herald office in Granville street. 370

Cross-examined by Mr. Harrington. I recollect the date from memory; I don't recollect the date of the conversation. I mentioned the 20th November from looking at the paper. I don't know of my own knowledge where the papers came from, nor where Marshall went out. He was a salesman in my store. It was not his duty to go to attend to Crosskill's business. I know the paper to be the Herald from the title being on it; without seeing the name, I would not swear what it was. 380

ROBERT T. MURRAY sworn. I went into the Herald office in 1875, and left early in October, 1878. The Herald was published in Granville Street. The number was 78 when I left. Stewart did not edit the Herald in my time except occasionally. I am a practical printer, and familiar with type and making up. I think I would know a copy of the Herald if I saw it. [Looks at paper "H. McD. 1," and says it looks exactly like the Herald as I knew it.] I do not know that this is a copy. Any Halifax paper could be duplicated. I have no doubt that this paper ("H. McD. 1.") is a genuine copy of the Herald of the twentieth November. [This is objected to.] It appears to be the same type they had when I was in their employ. I am familiar with the make-up of the paper. I attended to the city and general news and read proofs, and I speak from my personal knowledge of the office. The paper could be duplicated in this city, but the heading would have to be imported. It could scarcely be done on the morning of the twentieth November. It would be a practical impossibility. I know T. P. Connolly disposing of the Morning Herald from seeing it on his desk. 390

Cross-examined by Sedgwick. Q.—Suppose the heading of this paper is turned down, could you swear to it on sight? A.—I could swear to any Halifax paper, without seeing the name, by its general appearance. If the heading were on hand and enough men on hand it is possible the paper might be duplicated in a day. The Herald is now printed with different type. The old type might be used to turn out a paper like this. 400

THOMAS BROPHY sworn. I am a printer, a practical printer; employed in the Herald office as foreman for five years. I was employed partly by the last witness, partly by Griffin and partly by Frederick Allison. The Herald is printed in Granville Street; there is a sign in front of the building, "Morning Herald;" it is south of the Y. M. C. Association building. The Herald was published there in November, 1878. I was their foreman, and made up the form every alternate evening. [Mr. Harrington objects to comparison of type.] I would know the Morning 410

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Herald when I see it unless it is a fraudulent copy. I don't think that I could detect a fraud; it might be counterfeited in a short time; it would only be a question of time. I cannot say that I saw a Herald issued on the 20th November, 1878; my memory does not carry me back to that far. [Looks at paper "H. McD. 1," and says it is a copy of the Herald.] I cannot say that this is a fraudulent copy. I have not a doubt that this is an exact copy of the Herald; I see nothing spurious about this. It passes out of my hand and goes to the press room. [Is shown a paper, and says this is a fac-simile of the other paper; I don't doubt that this is a genuine copy of the other, marked "H. McD. 3."] The Herald was printed in the building. I don't remember seeing papers sold there; saw them exchanged; they are supposed to be sold in the courting room. Saw the newspaper carriers go in and out. Compositors were ten. This ("H. McD. 3") is as exact a copy as could be of the edition of the Herald of 20th January, 1878. 420

Cross-examined by Mr. Harrington. I don't always read the Herald. I am not in a position to say where this paper (number one) was published. I speak from the appearance of the paper, and not from knowledge of where it came from or where published. If one was in possession of the heading the papers might be duplicated in one day, according to the number of hands. The type of the paper was changed since the issue of that paper.

JOHN T. FULMER sworn. I am not sure that I am a shareholder in the defendant company, but I believe I am; since the inception of the paper, five or six years ago. I am a barrister and attorney, and Librarian of the Legislative Library. We have a file of the Morning Herald newspaper in the Legislative Library. I was served with the subpoena (marked "H. McD. 4.") I have not got the file of the Morning Herald for the year 1878; we have some of them; the paper of the twentieth November, 1878, is not there; I have not individually a file of the Herald containing the paper of the date referred to. I told you (Mr. Weeks) that I had a file. It is so, but I have not that paper. (Witness goes to get the file.) 430

HERBERT CROSSKILL sworn. I was Deputy Provincial Secretary nearly eleven years, beginning 1st February, 1868, and down to 18th November, 1878. The Morning Herald newspaper was received in the Provincial Secretary's office daily during that time, rarely missed. The office was subscriber for it and paid by warrant. Sometimes I read the paper, not always. Saw it nearly every day. Saw a copy of the Morning Herald of November 20th 1878, first in the reading-room, and then in Mr. Connolly's shop. I have no doubt it was a copy of the paper seen by me in the Provincial Secretary's office. This paper ("H. McD. 1"), or rather the article "Concerning Martyrs," is an exact copy of the same in the paper I read in the reading-room (Merchant's Exchange). I was the person referred to. This was the twentieth November. I read it between 9½ and 10½; I read the whole article. I think I went directly to Mr. Connolly's book store; I got there before eleven o'clock. I saw another copy there, on his desk or table. I opened it. Mr. Connolly was present. It contained a copy of this article (objected to,) "Concerning Martyrs." I asked Connolly to allow one of his clerks to go to the office of the Herald Printing and Publishing Company to purchase a paper of that morning's issue. One of his clerks, James E. Marshall, went with directions to go to the office of the Herald newspaper, and purchase one of that morning's issue, and bring it back to me. I gave him two cents. He went and returned in a short time, and brought this paper ("H. McD. 1"). The writing in the paper is in my handwriting, written immediately by me, and signed by Marshall. [Objected to.] [Mr. Weeks asks the witness to read the memorandum; he does so. Mr. Harrington objects. Mr. Weeks contends that the reading of the memorandum by the witness to himself, is receiving it in evidence. I 440 450]

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dissent, as I was not asked to receive it, and the jury did not hear it]. The endorsement was made before eleven o'clock on November 20th, 1878.

Cross-examined by Mr. Sedgwick. The last time I was in the Provincial Secretary's office was the 18th November, 1878. I then ceased to be Deputy Provincial Secretary; I was gazetted Deputy Provincial Secretary. Shortly after the libel, I instructed counsel to take proceedings on my behalf. This ("H. McD. 5") is my signature. I sent this paper to the Government of Nova Scotia. [Objected to.] The following spring I commenced business in Middleton, buying and selling goods. I was refused credit last spring by one man, and I imagined it was partly in consequence of the libel. I cannot swear that any person refused me credit on that account; none refused me credit since I commenced business. It was J. R. Jennett refused credit. Nobody refused to associate with me, in consequence of the publication, so far as I know. [Objected to.] I can't swear that my reputation has been injured by the article referred to. I first called Connolly's attention to the article in question. I asked Connolly's clerk to go for me and get the paper. I read that one article in the reading-room, but can't say I read more. 460

CHARLES ANNAND sworn. I am familiar with the Morning Herald newspaper; it exchanges with the Chronicle newspaper, since the establishment of the Herald. A file of the papers so received of the Herald is kept in the Chronicle office. The paper here produced ("H. McD. 6") is a copy of the Morning Herald of the 20th November, 1878. Paper "H. McD. 1" and "H. McD. 6" are as I think exact copies. [Objected to.] I am not a printer. I should say there is no dissimilarity between the two copies. I know the Morning Herald from its general appearance; both these under my hand are Morning Heralds, (No. 1 and No. 6.) [Objected to.] There is no other Herald published in Halifax. I have been connected with the press for sixteen years. It would be impossible for any office in Halifax to forge the paper in a day. It is published between three and five, and a copy would have to be got before forging. 470

Cross-examined by Mr. Harrington. I get to my office between ten and eleven, and did so at that time. The only means of knowledge I have, is by the Herald boy bringing the paper to the office. I cannot say that the boy brought it on the twentieth November, 1878. I judge of the date by seeing it in the paper. I read the article complained of at the time, and see it is the same here, as far as I remember. Seven-eighths of a daily newspaper is kept standing from day to day. When I spoke of duplicating, I meant the whole of the paper. The type in the editorial is nonpareil; ah, nonpareil in the article in question. I don't know where either of the papers came from. I handle this one very frequently. The exchanges are sent to the lenders. 480

Cross-examined by Mr. Weeks. Nothing.

[Mr. Weeks tenders papers in evidence. Mr. Harrington objects. I receive the paper, H. McD. A. is read.]

HUGH MUNRO sworn. I was connected with the Morning Herald newspaper all the year 1878 as clerk. I kept part of the books. I judge the circulation of the Herald would be 8000. It circulated in all the counties of this Province; copies went to England, the States, the Canadas, New Brunswick and Newfoundland. I know young Marshall; do not remember selling Herald to him; I was in the habit of selling papers as each edition appeared. [Mr. Motton tenders copy of Herald "H. McD. 6," proved by Mr. Annand. Mr. Sedgwick objects. I receive it under the authority of Gathercole vs. Miall, 15 M. & W., 319, and for the same purpose.] 490

JOHN MCDUGALL sworn. I served a copy of this paper ("H. McD. 7") upon Thomas E. Kenny, Allison Smith, J. S. McDonald, Hon. S. L. Shannon, Hon. D. McN. Parker, Robert Sedg-

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wick, J. J. Stewart, Francis D. Parker, W. J. Almon, Charles H. M. Black, Frederick Allison, E. J. Lordly. Served them on the 18th January, 1879. I made this memorandum at the time. 500

Cross-examined by Sedgwick.

[Mr. Weeks tenders notice to produce ("H. McD. 8"). Objected to. Read. Mr. Weeks tenders letter ("H. McD. 7"). I receive it, and it is read.]

[Plaintiff rests.]

Mr. Sedgwick moves for nonsuit.

No evidence of publication by the defendant Company.

No evidence of the issuing of the paper in question by the defendant company.

Words alleged to have been published of plaintiff as Deputy Provincial Secretary.

Evidence is that he was not in the office at the time. 510

Words in declaration not actionable *per se*.

No allegation that the libel was spoken of or concerning the plaintiff.

Defendant calls no witnesses.

Mr. MOTTON closes for plaintiff.

Mr. SEDGWICK for defendant.

MR. JUSTICE McDONALD'S CHARGE.

I explained to the jury the pleadings in the cause and the law relating to libel so far as it bears upon this case, and said that the publication complained of by the plaintiff was capable of bearing the meaning assigned to it in the declaration, but that it was their duty to say whether or not it did so in this particular case, and that the words published themselves show a cause of action; it is not necessary to assign to them by innuendo any other meaning than that which they import. I said that to entitle the plaintiff to recover, he must satisfy them that the defendant company not only published the words complained of, but did so falsely and maliciously, and that where the publication is defamatory, the law implies malice, unless the circumstances attending the publication rebut that inference, and that in this case I was unable to direct their attention to any such circumstances, but that they had a right to say that such circumstances did exist if they could conscientiously do so under the evidence. I said that a publication was not a libel if it had for its object the correcting of a misrepresentation of fact or the censuring of what is hostile to morality and the public good; that the right to publish fair criticism in such cases is a right of newspaper publishers, as well as of others, so long as it is confined within proper limits and without actual malice. If a publisher, while professing to act in the exercise of that right, goes so far as to impute criminal conduct to another person falsely and maliciously, he cannot protect himself under the plea of fair criticism, but is liable to an action of this kind for damages. I said that the plaintiff seeks damages not on account of any comments or criticisms by the defendant company upon any proved acts of his, but because, as he alleges, he was represented as being guilty of criminal conduct, without the shadow of a foundation or justification for making 520 530

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such charges. The defendant's plea of fair comment or criticism, I told them, was not supported by the evidence, and even if proof were given in support of it, as it appears upon the record, it would not be a sufficient defence for falsely publishing the words complained of, and it was neither pleaded nor attempted to be proved that the charges contained in the alleged libel were true. I said that I thought the main question was whether or not the defendant company did in fact publish the defamatory matter complained of, and that, in my opinion, much of the difficulty which usually occurs in proving the connection of individual defendants with newspaper publications in actions of this kind was obviated by the fact that the defendant company had been authorized by Statute, presumably passed at the corporator's own instance, to publish a newspaper identical in its name with the one in proof. I said that the defendant corporation had its legal existence under the name of the Morning Herald Printing and Publishing Company, and that by the same act it is declared to be constituted such company for the purpose, among others, of carrying on the printing and publication of the Morning Herald newspaper. I said that we could not ignore the existence of that Act, which may well be presumed to have been passed at the instance of the corporators, any more than we could ignore the other evidence given in the cause. If, then, the defendant company are the publishers of the Morning Herald newspaper, the question arises, is the paper produced in evidence a genuine one, issued by that company, or is it a spurious one, purporting to be what it really is not? I said that, although with the view that I felt bound to take of the case, I received the paper tendered and had it read in evidence, I did not at all withdraw the question of publication from their consideration, and that they had a right to say, if they could do so honestly, that the paper read was not published by the defendant company at all, and to give their verdict accordingly; but that if they should find upon the whole case in favor of the plaintiff, the remaining question would be one of damages only. In such case he would be entitled to some damages, even if nominal, and it is not necessary that he should prove item by item the amount of his actual loss sustained in consequence of the publication complained of. The damages ought to be commensurate with the injury sustained, but I thought, under all the circumstances, they ought not to be more than that. I told the jury that they, not I, were the proper judges of what the amount of damages ought to be, in case they should find in favor of the plaintiff under the instructions just given.

They found for the plaintiff \$3,000 damages.

EXHIBIT H. McD. 1.

A newspaper purporting to be the Morning Herald of 20th November, 1878, containing the following:—

"CONCERNING MARTYRS."

"Our morning contemporary has at last created a veritable Grit martyr in the person of Mr. Herbert Crosskill. It first tells the awful story of his martyrdom, and then decks him with the white robe and the crown, and lastly turns upon his persecutors, and with its prophetic soul inspired with divine affatus, and its eye enlightened by a vision of the future, predicts the most terrible woe and desolation in store for Hon. Mr. Holmes and his unfortunate colleagues. We are

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" sorry that our duty as journalists compels us to dissipate such a really fine effort of genius, and to
 " completely destroy Mr. Herbert Crosskill's chances of a martyr's crown. But the truth must be
 " told, even if better things than Mr. Crosskill fall, and the truth in this case is very damaging,
 " both to our contemporary and its hero. Mr. Crosskill was appointed in 1867, when his party
 " came in power. He possessed not one solitary qualification for the office, further than that he
 " was a renegade from our party, and, like all renegades, was unusually bitter, violent, and un- 580
 " scrupulous. His selection caused no little surprise at the time, but ceased to be so, when it
 " became known what manner of men he was required to serve, and the kind of services that
 " Messrs. Annand and Vail required of him. For eleven years the Provincial Secretary's office has
 " been a sink of iniquity where public robbery ran riot, and where political villainy of almost
 " every species was concocted and perpetrated. In all this Mr. Crosskill was a willing and active
 " participator. The Messrs. Annand may perhaps be excused for bemoaning him, for he was a
 " man of their own heart, both in his public and private life, and many a time has he no doubt
 " served their purposes. Out of his office Mr. Crosskill was a loud-mouthed and violent partizan,
 " ridiculing Hon. Mr. Holmes and his colleagues in the coarsest Billingsgate. To suppose that such 590
 " a man could be retained by any body of gentlemen in a confidential position, is
 " really astounding; the Government might as well think of having the editor of our
 " contemporary himself as their confidential clerk, as have such a man in the office of Deputy
 " Provincial Secretary. The pretence that the late government never dismissed men for political
 " reasons is utterly untrue. What were Messrs. Kinnear and Purdy of Amherst dismissed for, but
 " simply that they refused to vote for Mr. Annand? Why was Mr. Kowley of Yarmouth dismissed,
 " why were Messrs. George and Parsons dismissed, and why were scores of other able and hon-
 " est officials all over the Province dismissed, but simply for their politics? The Mackenzie Govern-
 " ment did the same thing. Take the case of Mr. Charles Almon for instance, who, after having held
 " the office of Surveyor of Shipping for this port for six years, was dismissed without cause a few 600
 " weeks after the change of government in 1874. There was no talk about Americanizing our in-
 " stitutions then. In all of these cases the officers dismissed were honest and faithful, elements that
 " are certainly lacking in the case of Mr. Herbert Crosskill. If that person's name is to be placed
 " on the roll of martyrs, it must be in the same list with that of the chief baker whom Pharaoh
 " hung."

EXHIBIT H. McD. 2.

HALIFAX SS. IN THE SUPREME COURT, 1880.

CAUSE.—HERBERT CROSSKILL, *Plaintiff*,

vs.

THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendant*.

Take notice that you are required to produce to the Court and the jury, on the trial of 610
 this cause, the files of the Morning Herald newspaper containing a certain newspaper called
 the Morning Herald, issued on the 20th day of November, A. D. 1878, printed and pub-
 lished, and also a certain paper writing of that date and a certain printed paper containing
 the words charged in the plaintiff's declaration in the above cause, and all manuscript

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writings and memoranda relating to matters in issue in the above cause, inclusive of books of defendants, and accounts and other books of defendants.

Halifax, April 27th, A. D. 1880.

Yours, &c.,

ROBERT MOTTON, *Attorney of Plaintiff.*

620

To the Defendants or their Attorney,

HALIFAX SS. IN THE SUPREME COURT, 1880.

CAUSE.—HERBERT CROSSKILL, *Plaintiff,*

vs.

THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendant.*

I, John McDougall, of the City and County of Halifax, student-at-law and clerk in the office of Robert Motton, Esquire, the plaintiff's attorney herein, make oath and say as follows:—

That on the twenty-seventh day of April, instant, I served Robert Sedgwick, Esquire, the defendant's attorney herein, with a true copy of the notice hereto annexed, marked "A," by leaving the same with a clerk (O'Brien) at his office about four o'clock in the afternoon

630

JOHN McDOUGALL.

Sworn to at Halifax, this 27th day of April, A. D. 1880.

J. W. KELLY JOHNSTON,

A Com. of the Supreme and County Courts for the County of Halifax.

EXHIBIT H. McD. 3.

A newspaper purporting to be the Morning Herald of 20th November, 1878, containing an article entitled "Concerning Martyrs," as set out in Exhibit H. McD. 1, above.

EXHIBIT H. McD. 5.

640

TO THE HONORABLE THE EXECUTIVE COUNCIL OF NOVA SCOTIA:—

GENTLEMEN,—Your memorialist begs leave to submit, for the consideration of your Honorable Body, the following facts:—

For a number of years it has been customary, when deemed expedient to remove an official from the public service in this province, to grant a retiring allowance from the Public Treasury. In the case of Mr. W. A. Hendry, late Deputy Commissioner of Crown Lands, a grant of a year's salary was made to him. Mr. Cattley, in the Board of Works Department, and I think Mr. Lloyd, of the Crown Land Office, a junior clerk, were each allowed a year's pay. Mr. Fairbanks, when removed from the Crown Land Department,

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received six months' pay, as compensation, and to enable him to live until he could find 650
 employment. Even the late Attorney-General Weeks, as your Honorable Council will find
 on reference to the records, was allowed two quarters salary on being dismissed. Mr. Kerr
 received but one quarter's pay when dismissed; but on reference to the Minute of Council
 relating thereto, it will be found that he had already drawn \$1,265 for a few days over five
 months' services, and independent of that fact the case of your memorialist for *obvious reasons*
 is very different from that of Mr. Kerr. Your memorialist had served the public as Deputy
 Provincial Secretary for nearly eleven years, during which period not a single word of
 complaint was ever uttered by any member of the government against his efficiency or
 faithfulness in the discharge of the duties of his office. During the whole of his incumbency
 he was never one minute behind time, and was invariably in his place in the office at or 660
 before 10 o'clock, and notwithstanding the false charges advanced against him by the
 Herald newspaper, he flatters himself that he has ever been, in his bearing, courteous and
 gentlemanly toward all persons having business with the department, irrespective of class,
 creed or politics.

Your memorialist was removed, without a shadow of a charge against him in his
 official capacity, at the beginning of a long winter, without the means of living or any
 prospect of obtaining a situation or business by which he may be enabled to earn a living-
 hood for himself and family. Under the above circumstances, therefore, your memorialist
 considers that he is justified in expecting and believing that the present government will be
 as liberal towards him as former governments were to those whom they conceived it to be 670
 to the interest of the departments to remove from the service.

Trusting that your Honorable Body will take his case into favourable consideration at
 the first meeting of Council, your memorialist will ever pray, &c., &c.

HALIFAX, 16th December, 1878.

H. CROSSKILL.

EXHIBIT H. McD. 6.

A newspaper purporting to be the Morning Herald of the 20th November, 1878,
 containing an article entitled "Concerning Martyrs," as set out in Exhibit H. McD. 1,
 page 14.

EXHIBIT H. McD. 7.

MORTON AND McS. EENEY, 680
 Barristers, &c.,
 183 HOLLIS STREET.

HALIFAX, January 18th, 1879.

GENTLEMEN,—Mr. Herbert Crosskill, late Deputy Provincial Secretary, has professionally
 retained us to proceed against you, as a proprietor and publisher of the Morning Herald, for
 having, on the 20th day of November, 1878, published in the Morning Herald of that date a
 libellous and defamatory article against him, and prejudicial to his character. Mr. C. has waited
 for some time in the hope that you would, in the columns of your paper, retract the same; but as 690

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you have not seen fit to do so, and as you have charged him with public robbery, he is compelled, in vindication of his own character, to seek redress at law.

We are therefore obliged to call upon you to make satisfactorily reparation to Mr. C., and unless we hear from you at an early day, we shall be obliged to proceed without further notice.

We are your obedient servants,

MOTTON & MCSWEENEY.

MESRS. DR. D. MCN. PARKER.
W. J. ALMON.
FREDERICK ALLISON.
THOMAS E. KENNY.
FRANCIS G. PARKER.
CHARLES BLACK.
S. L. SHANNON.
J. J. STEWART.
ROBERT SEDGEWICK.

JAMES McDONALD.
EDW'D J. LORDLY.
ALLISON SMITH.
JAMES S. McDONALD.
G. P. PAYZANT.
HON. ALEX. MACFARLANE.
GEO. C. WIGGINS, Windsor.
THOS. E. KENNY.

700

Served letter on Thos. E. Kenney, about 3.15, P. M., by leaving the same with Thomson at his office.

Served Allison Smith, by leaving the same with Mr. C. E. Davidson at his office, about 3.05 P. M.

Served J. S. Macdonald, Esq., personally, about 3.25 P. M. at his place of business.

Served Hon. S. L. Shannon with letter, about 3.30 P. M., by leaving the same with McLellan, 710 at office.

Served Hon. D. McN. Parker, personally, at his office, about 3.20 P. M.

Served Robert Sedgewick, personally, about 3.30 P. M., at his office.

Served J. J. Stewart, Esq., with letter, by leaving it with Mr. Sedgewick at office, about 3.30 P. M.

Served Francis G. Parker, by leaving it under his office door, about 3.05 P. M.

Served W. J. Almon, Esq., with letter, by leaving same with Dr. Almon, Jr.

Served C. H. M. Black, Esq., by leaving same with Dyce Cutlip, about 3 P. M.

Served Frederick Allison with letter, by leaving same with Augustus Allison, about 3.05 P. M.

Served E. J. Lordly, Esq., personally, about 3.15, at his place of business.

EXHIBIT H. MCD. 8.

720

HALIFAX, SS. IN THE SUPREME COURT, 1880.

HERBERT CROSSKILL, *Plaintiff*.

vs.

THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendant*

Take notice that you will be required to produce to the Court and Jury, on the trial of this cause, a certain letter dated the eighteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, addressed by Motton and McSweeney, Barristers-at-Law, to D. McN. Parker, W. J. Almon, Frederick Allison, Thomas E. Kenny, Francis G. Parker, Charles Black, S. L. Shannon, J. J. Stewart, Robert Sedgewick, James McDonald, Edward J. Lordly, 730

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Allison Smith, James S. McDonald, G. P. Payzant, Hon. Alexander McFarlane, and George C. Wiggins, and that unless you do, the plaintiff will give secondary evidence of the contents of said letter.

Dated this 1st day of May, A. D. 1880.

ROBERT MOTTON,
Attorney of Plaintiff.

To the Defendants or their Attorney.

HALIFAX, SS. IN THE SUPREME COURT, 1880.

HERBERT CROSSKILL, *Plaintiff.*

vs.

THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendants.*

740

I, Otto S. Weeks, of the City of Halifax, in the Province of Nova Scotia, Barrister-at-Law, of counsel with the plaintiff herein, make oath and say as follows, that is to say :—

1st. I did personally serve a copy of the annexed notice to produce on Robert Sedgwick, Esq., the attorney of the defendant company herein, on Saturday, the first day of May A. D. 1880, by delivering the same to him in open Court.

OTTO. S. WEEKS.

Sworn to at Halifax, in the County of Halifax, this
3rd day of May, A. D. 1880, before me.

(Signed) C. S. HARRINGTON,
Commissioner Supreme Court, County of Halifax.

750

RULE NISI FOR APPEAL.

HALIFAX SS. IN THE SUPREME COURT, 1880.

CAUSE.—HERBERT CROSSKILL, *Plaintiff.*

vs.

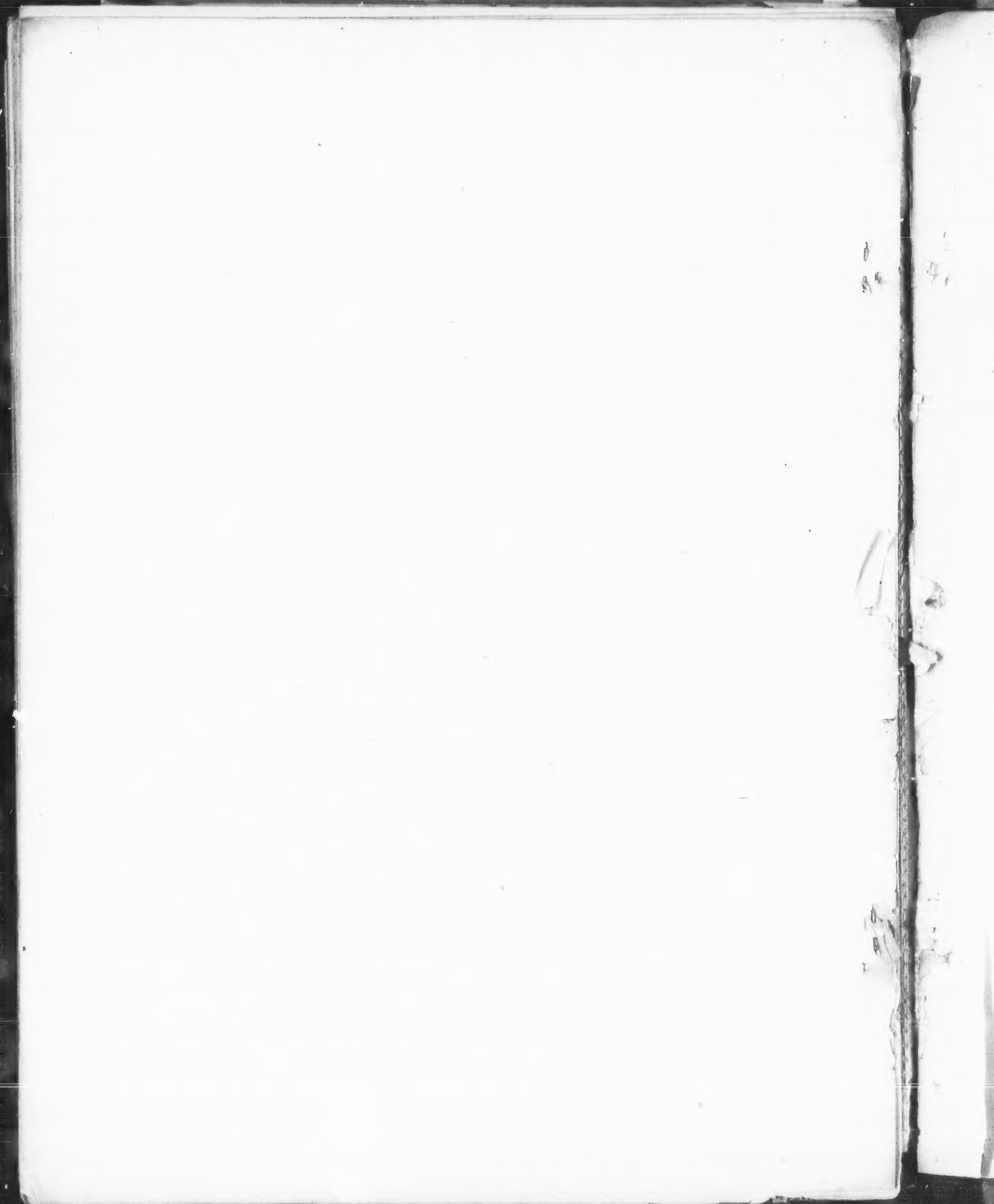
THE MORNING HERALD PRINTING AND PUBLISHING COMPANY, *Defendant.*

Upon reading the minutes of evidence in this cause, and the pleadings, and on motion,—

It is ordered that the verdict for the plaintiff herein (being a verdict for three thousand dollars damages) be, and the same is hereby set aside, with costs, on the following grounds :—

1. Because the said verdict is against law.
2. Because the said verdict is against evidence.

760



3. Because of the improper reception of evidence.
4. Because of the improper rejection of evidence.
5. Because of the misdirection of the learned Judge who tried this cause.
6. Because the damages awarded by the Jury herein are excessive.
7. Because there was no proof of the publication of the alleged libel by the defendants.
8. Because the declaration did not allege what defamatory matter was published of the plaintiff.
9. Because the declaration did not set up any cause of action against the defendants.
10. Because no defamatory matter was alleged to have been published concerning the plaintiff, except such as related to him as the holder of an office which he did not fill at the time of such alleged publication. 770

And on grounds taken on the motion for nonsuit and during the trial, unless cause to the contrary be shown before this Honorable Court within the first four days of the next ensuing December term or session of this Honorable Court.

Dated at Halifax, this 17th day of May, A. D. 1880.

By the Court.

On motion of MR. SEDGWICK, for Defendants.

M. I. WILKINS,
Prothonotary. 780